

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, February 2, 2015**  
**Kitty Hawk Town Hall, 6:00 PM**

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentation
  - Outer Banks Sporting Events Upcoming Races/Mr. Michael Mitchell, Race Director  
(Rescheduled)
5. Beach Nourishment – FAQ's
6. Public Comment
7. Consent Agenda
  - a.) Approval of January 5, 2015 Council Minutes
  - b.) Revenues and Expenses Report for December 2014
  - c.) Acceptance of Donation of Service from Kitty Hawk Iron & Steel Works, Inc.
7. Items Removed from the Consent Agenda
8. Public Hearings
  - a.) Text Amendment: Application to amend Section 42-252(c) of the Kitty Hawk Town Code to allow "truck rentals" as a conditional use, subject to certain conditions, in the Community Shopping Center (BC-3) zoning district.
  - b.) Conditional Use Permit: Application for a conditional use permit to allow truck rentals, subject to certain conditions at The Home Depot, located at 5300 N. Croatan Highway.
- 9.) Planning
  - a.) Subdivision Review: Application for preliminary approval of the proposed West Village Subdivision, a 30 lot subdivision off of West Kitty Hawk Road.
- 10.) New Business
  - a.) East Lillian Street Beach Access Parking Improvements Project – Two bids for this project were opened on January 14, 2015. The RPC bid was in the amount of \$59,600 and Barnhill's was in the amount of \$56,420. It is recommended Barnhill be awarded the contract with an added contingency of \$4,000 for a total of \$60,420.
11. Reports or General Comments from Town Manager
  - a.) Coastal Planning and Engineering Update
  - b.) Police Department Compliment
12. Reports or General Comments from Town Attorney
13. Reports or General Comments from Town Council
14. Public Comment
15. Adjourn

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**COUNCIL MEMBERS PRESENT:**

Mayor Gary Perry, Mayor Pro Tem Ervin Bateman, Councilman Craig Garriss, Councilwoman Emilie Klutz and Councilman Jeff Pruitt

**STAFF MEMBERS PRESENT:**

Town Manager John Stockton, Town Clerk Lynn Morris, Attorney Casey Varnell, Town Planner Rob Testerman, Finance Officer Charlene Allen, Management Assistant Melody Clopton, Police Chief Joel Johnson, Fire Chief Lowell Spivey, Public Works Director Willie Midgett

**1. Call to Order**

Mayor Perry called the meeting to order at 6:00 pm.

**2. Moment of Silence/Pledge of Allegiance**

Following a moment of silence the Pledge of Allegiance was recited.

**3. Approval of Agenda**

MPT Bateman reported he received a telephone call concerning agenda item (4). Mr. Mitchell asked to defer the presentation until a later meeting and then **made a motion to remove it from the agenda. Councilman Garriss seconded the motion and it passed unanimously, 5-0.**

**4. Presentation**

- **Outer Banks Sporting Events Upcoming Races/Mr. Michael Mitchell, Race Director**

*(Removed)*

**5. Beach Nourishment – FAQ's**

Mayor Perry read aloud the following:

**Question:** *Will this be a five year loan or a bond issue?*

**Answer:** *The debt service or loan is required to be approved by the North Carolina Local Government Commission which oversees all county or town applications for a banking, financial instrument, referred to as a special obligation bond. The financial consultant has projected a 3.5% rate in their five year calculation subject to market change when or if the project moves forward.*

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**Question:** *Will the special tax in the Municipal Service Districts A and B be frozen based on the 2015 assessed value?*

**Answer:** *The debt service loan will be a fixed yearly amount owed to the lending institution. Under North Carolina Statute local government loans must be paid first from budgeted revenue. Because town wide assessed values are subject to yearly change caused by increased or decreased revenue such as increased development or a recession, the MSD rates are calculated annually and adjusted to ensure sufficient funds are available to repay the annual debt service.*

*That is an important point. Some folks think that it is a fixed rate through the five year period. We have to pay the debt however we have to fix the rates to do that.*

**Question:** *Will a property re-evaluation occur during the five year loan pay back?*

**Answer:** *By North Carolina law re-assessment must take place at least every eight years. The last re-assessment occurred in 2013. However counties can re-assess more often. At this time there is no indication a re-assessment will occur before 2021.*

*We do not anticipate that but it could happen. That is all the ones I have for tonight and it will be the last before we have the public hearing.*

**6. Public Comment**

**(1) Lewis M. Scarborough, 151 Alberta Street, Jarvisburg, NC** – *I ran into a situation about three weeks ago. It was concerning being able to park at the public accesses and leaving my equipment there overnight. Many of you know I work seven days a week in Kitty Hawk, Kill Devil Hills, all over the place. I would like to ask the council if it would be possible just to park there in the winter time instead of hauling equipment back and forth. It is expensive and I'm trying not to pass the expenses to the clients that I deal with. I didn't know if we could have it from one date to another date.*

**Perry:** *You are leaving your equipment, basically commercial equipment, in a public parking area. The ordinance says it is for temporary use and not for a commercial endeavor. We would have to change the ordinance to do that. I am not inclined to ask council to do that unless someone on this council tonight tells me we should. In any event this is your chance to speak to us and you have told us what your concern is. We will take it under advisement.*

**Scarborough:** *Yes sir. People on that street, I have met all of them, and I help pretty much everybody around there. They all feel like if the equipment is there the chance that somebody is going to come back to pick it up kind of deters anybody that would want to break in their houses. That is another consideration. It does actually help people because of a presence there. It works out the same as having a police car parked periodically throughout Kitty Hawk. They do not*

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*know when we are going to show up to get our equipment. I feel like it is helping people and it would help me a lot.*

**Klutz:** *Are you talking about the parking lots such as Byrd and Lillian Streets and the bath house?*

**Scarborough:** *No ma'am. The little gravel parking areas. In the past three weeks I think I have seen maybe five cars there. There is nobody there in the wintertime. And in the summer time I'm scared to leave my equipment, afraid it won't be there the next morning.*

**Klutz:** *So it is really the cross streets you are interested in.*

**Scarborough:** *Yes ma'am. You know everybody needs us to clear their houses out so we just need a little help from the council so we can get in there and do our job to help folks out.*

**Perry:** *Thank you.*

**Scarborough:** *Thank you very much.*

**(2) Jesse Hines, 1121 F Kitty Hawk Road, Kitty Hawk** – *I am speaking about the West Village development that you will be talking later. I spoke last time this came up with the previous developer and if you don't remember my concern was basically it seems like such a large, dense plan to have 30 homes on that piece of property. I know it is a lot of acreage. I am the neighbor on the east side and I look back there every day out of my window. It is the creek that separates my house from that piece of property. After Hurricane Irene it probably quadrupled in size. My wife and I have walked that property before and it is so wet I really don't see how it is possible to put 30 homes back there without putting too much fill and breaking some of the guidelines and some of the rules.*

*My other concern is 30 houses usually means 60 cars, 30 or 60 dogs and more and more noise pollution. More traffic on such a small road and Kitty Hawk Road and it just seems like such a large project for such a volatile area.*

*In closing, I decided to build a house here 10 years ago, become a citizen and pay taxes in Kitty Hawk because I admire the village for what it is. To me that project does not represent what Kitty Hawk is. What I would ask you to do is carefully consider how large this project is and what it means to Kitty Hawk and to the community to have that much traffic. And of course the wetlands and the ecological damage it could pose to have such a large subdivision there. Thank you very much.*

**(3) Linda Barnhart, 4000 Virginia Dare Trail, Kitty Hawk** – *I want to address the parking issue. I have a house next to the Lillian Street access and I understand overnight parking or commercial vehicles is not what anybody would want there. However in the winter months, when*



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*you have some of these side streets and there is the police car that is parked periodically to help deter the break ins that we get up and down Lindbergh and on the beach road ... maybe instead of changing an ordinance there could be some type of a permit that local tradesmen could apply for and show where they are working in the area. Unfortunately most of us have driveways that will fit only one car and you cannot leave a bobcat or whatever there. Maybe they could during the winter months have some type of permit that could sit on the dashboard to allow these people to possibly park there and help keep the business moving.*

#### **7. Consent Agenda**

**a.) Approval of January 5, 2014 Council Minutes.** *(An affirmative vote for the consent agenda will approve these minutes.)*

**b.) Revenues and Expenses Report for December 2014.** *(An affirmative vote for the consent agenda will acknowledge this report.)*

**c.) Acceptance of Donation of Service.** Kitty Hawk Iron & Steel Works, Inc. provided a crane and rigger to lift and move a shed from the Bath House to the police department. The donation of service is in the amount of \$550.00. *(An affirmative vote for the consent agenda will accept this donation of service.)*

**Councilwoman Klutz moved to approve the consent agenda and it was seconded by MPT Bateman. The motion was unanimously approved, 5-0.**

#### **8. Items Removed from the Consent Agenda**

There were no items removed from the consent agenda.

#### **9. Public Hearings**

**a.) Text Amendment: Application to amend Section 42-252(c) of the Kitty Hawk Town Code to allow "truck rentals" as a conditional use, subject to certain conditions, in the Community Shopping Center (BC-3) zoning district.**

**Councilman Garriss made a motion, seconded by MPT Bateman, to go into public hearing. The vote was unanimous, 5-0.**

**Testerman:** *This text amendment would allow truck rentals with a conditional use permit. It would have specific conditions applied to it and are listed in the staff report. They deal with the amount of parking spaces, types of vehicles allowed to be used, hours of operation, and limits on maintenance work to be done.*

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*In 2013 the town council voted unanimously to deny a similar text amendment. There was an application to add vehicle rentals as a conditional use in the BC-1 zoning district. This one is different from that in a few ways. The current proposal will allow truck rentals in a BC-3 district. There are only three properties in Kitty Hawk that are zoned as BC-3 and they are Wal-Mart, Shoreside Center and Home Depot so the truck rentals would be limited to a smaller area of town.*

*The current text amendment would not permit any additional signage associated with the truck rentals and would permit a larger rental operation than the 7 vehicle limit from the prior proposal. This text proposal would allow 6% of the total parking spaces and a maximum of 25 parking spaces to be dedicated to the truck rental accessory business. Presently vehicle rental operations are not a permitted use in any commercial zoning district in town. During the previous text amendment review staff became aware that Home Depot had established a sizeable side business renting large equipment and trucks to customers. After consultation with the town attorney staff notified Home Depot that the truck rental business is classified as a separate, distinct use and is not currently permitted. They are trying to get into compliance.*

*None of the other incorporated towns in the area have any specific requirements regarding vehicle rentals. Dare County allows them in specific districts without listed conditions or standards and Currituck County allows automotive sales and rentals with a list of requirements to follow.*

*After analyzing the proposal staff is suggesting one additional condition be listed. The proposed ordinance should include a requirement that the truck rental spaces can only take up parking spaces in excess of the minimum required spaces for the principal business on site. Using The Home Depot as an example they currently have 393 parking spaces and by our parking requirements they are only required to have 377 and it comes out to 22 spaces they are requesting to use.*

*The CAMA Land Use Plan does not address the issue of vehicle rental businesses. At the December 11th meeting the planning board voted unanimously to recommend approval of the proposed text amendment. The applicants for the text amendment and the conditional use permit are snowed in in New Jersey. They were hoping to be here tonight and if there are any questions I will try and answer to the best of my ability.*

*After asking if anyone in the audience wished to speak and hearing no one, Mayor Perry asked council if they had any questions or comments. They did not and the mayor asked for a motion to return to regular session.*

**MPT Bateman made a motion to go back into regular session. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.**

Councilman Pruitt moved to adopt the proposed text amendment Section 42-252(c) of the Kitty Hawk Town Code to allow truck rentals as a conditional use, subject to the recommended conditions, in the Community Shopping District BC-3 zoning district. The town council finds the proposed text amendment is consistent with the town's CAMA Land Use Plan and finds this amendment to be in the public interest by allowing a compatible use in the BC-3 zoning district. Councilwoman Klutz seconded the motion.

**Bateman:** *I remember when Home Depot came before us when I was on the planning board. They have always rented things there so that is one of the rationales I have for voting for it.*

**Perry:** *It is not new. I thought they already had it and if everybody votes aye then they will have it.*

The vote was unanimous to approve the motion, 5-0.

**9.(b) Conditional Use Permit: Application for a conditional use permit to allow truck rentals, subject to certain conditions at The Home Depot, located at 5300 N. Croatan Highway.**

Councilwoman Klutz made a motion to return to public hearing for the conditional use permit. The motion was seconded by Councilman Garriss and passed unanimously, 5-0.

**Perry:** *If anyone is planning to speak during this public hearing the clerk will need to swear you in.*

Clerk Morris swore in Planning Director Rob Testerman.

**Testerman:** *This conditional use permit application is also The Home Depot. The applicant is requesting approval to establish a truck rental business as an accessory use to the principal Home Depot use at 5300 North Croatan Highway. The operation will encompass as few as 4 parking spaces and upward to as many as 22 parking spaces depending on the season. As I mentioned before there are 22 excess spaces there and at certain times during the year they have Christmas tree sales, or an outdoor garden center or other equipment rental and they understand that all of that can take up no more than 22 spaces at any given period. The conditional use standards that apply to truck rentals shall only be permitted as an accessory use to a principal business use. The truck rental space shall not exceed 6% of the total provided parking spaces for a maximum of 25 spaces for the principal business use. Truck rental spaces shall only utilize parking spaces in excess of the minimum required spaces for the principal business on site. No additional signage will be permitted for the truck rental use. Rental trucks to customers are to be limited to those trucks requiring Class D or standard/non-specialized driver's license.*

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*Under operating requirements the hours of operations are limited to the principal business operating hours and rental trucks are limited to the designated area set forth on a conditional use permit site plan. That area is to be located at the perimeter of the business's parking lot and designated as truck rental spaces. Rental trucks are not to be serviced, repaired or maintained at the conditional use location. All such service, repair or maintenance activities are to be conducted off-premises. In addition, rental trucks will not be refueled at the conditional use location. General cleaning of the interior cab may be required. If the interior of the cab is to be cleaned all refuse is to be brought back into the business for disposal. Rental trucks left outside of the designated truck rental spaces are to be moved by the business to the designated area within 24 hours. The applicant's proposal will comply with all of these requirements and were the specific requirements council approved in the previous text amendment.*

*As I mentioned the subject property is zoned as BC-3 and a portion of the BC-3 contains a Home Depot store. The abutting subject property to the east is the Aycock Brown Outer Banks Visitor Center which is zoned Emergency and Governmental Services. Directly to the south is a portion of the Sea Scape Golf Course zoned Beach Residential One and to the west is the adjoining Shoreside Center Shopping Center which is zoned Community Shopping Center BC-3 and contains Harris Teeter, Wal-Mart and a variety of other retail uses. There are also several commercial properties across the highway in Southern Shores.*

*The proposed use is a truck rental business and would be allowed as a conditional use. There would be no changes to the access to The Home Depot parking lot. The subject property presently contains 393 parking spaces, which is 22 more than the minimum amount required to accommodate The Home Depot store.*

*On the attached site plan the applicant has clearly outlined how the number of rental trucks would change with the seasons and where the various uses would be located on the subject property. In each situation the total number of parking spaces used by the truck rental, seasonal garden center and Christmas tree sales is 22 parking spaces. At no point during the year would the total number of parking spaces be reduced to below the minimum amount required to serve The Home Depot and there is no proposed additional signage.*

*The Land Use Plan designates the subject property as Commercial Shopping and Working Area. The planning board found that the proposal is consistent with the plan.*

*Per the standards in Section 42-99(b)(7) in order to approve the application the town council must make the following findings of the proposed conditional use:*

*(a) does not materially endanger the public health or safety. The proposed location of the rental trucks is away from the main internal traffic flow and there are no other changes that would impact traffic flow or appear to endanger public health or safety.*

(b) *does meet all the required conditions and specifications. The proposal has been designed to comply with the standards of the zoning ordinance that was just adopted.*

(c) *will not substantially injure the value of adjoining property or be a public nuisance. The proposed truck rental business has been operating on The Home Depot property for some time. The town has not received any complaints about the operation during this time period. The only adjoining property that would be impacted by the proposed truck rental is the Shoreside Center which is also zoned BC-3 and contains intensive commercial uses. It is unlikely this would have any kind of negative impact on property value or create any nuisances for their neighbors.*

(d) *will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan. As I mentioned the only adjoining property is the Shoreside Center which contains large scale retail uses. There would be a similar intensity in use. The proposed truck rental use would be compatible with the district and as a Commercial Shopping and Working Area the proposed use is consistent with the CAMA Land Use Plan designation.*

*At the December 11, 2014 meeting the planning board voted unanimously to recommend approval of the proposed conditional use permit to allow truck rentals at Home Depot subject to the conditions set forth in the text amendment.*

**Perry:** *Thank you. Before we proceed any further is there anyone after hearing the presentation that would now like to come and speak before council on this subject? Let the record show no one came forward.*

Hearing no questions or comments from council Mayor Perry asked for a motion to return to regular session.

**Councilman Garriss made a motion to go back into regular session. The motion was seconded by Councilwoman Klutz and passed unanimously, 5-0.**

**Councilman Garriss made a motion to grant approval of the conditional use permit application to allow truck rentals as an accessory use at Home Depot, 5300 North Croatan Highway, subject to the conditions recommended by the planning board. The town council concurs with the conditional use findings in the staff report, finds that approval of this conditional use permit is consistent with the town's adopted CAMA Land Use Plan and finds that granting approval is in the public interest. Councilman Pruitt provided a second and the vote was unanimous, 5-0.**

## **9.) Planning**

**a.) Subdivision Review: Application for preliminary approval of the proposed West Village Subdivision, a 30 lot subdivision off of West Kitty Hawk Road.**



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**Testerman:** *The applicant has submitted a revised application and a preliminary plat for the West Village subdivision. The plat outlines a proposal to re-subdivide four existing parcels totaling 22.31 acres into 30 lots. A new road connecting to Kitty Hawk Road, waterline, and underground electrical lines will be constructed as part of the subdivision.*

*At its meeting on December 2, 2013 the town council voted unanimously to approve a preliminary plat for the West Village subdivision subject to various conditions. The previous approval expired December 3, 2014 so this is a new application. It is not an amendment to the previously approved one. Because of the time lapse it has to be treated as a completely new proposal but it is very similar to the previous one.*

**Perry:** *There are differences in this one to what was approved before so this is a new subdivision plat.*

**Testerman:** *Right.*

**Perry:** *Let the record indicate such.*

**Testerman:** *The proposed names for the subdivision and new road are both acceptable. The zoning is VR-1 and allows a density of a single family residential development proposed for these properties. VR-1 allows two dwelling units per acre. This one comes out to be about 1.3 dwellings per acre. The minimum lot size in the VR-1 is 15,000 square feet and the lot sizes for the subdivision range from 15,030 square feet to 89,745 square feet.*

*The wetlands designated by the U.S. Army Corps of Engineers are included in the lot size calculations. However any wetlands classified as coastal marsh under the North Carolina Coastal Area Management Act are subtracted from the calculation of lot size for those affected lots. Of the 22.31 acres, 9.38 acres, about 42% of it are wetlands. In order to construct the proposed road and other improvements as designed the applicant would be required to obtain a permit from the Army Corps to fill about a half an acre of wetlands in the designated hatched areas on the preliminary plat.*

*All of the proposed lots comply with the road frontage standards of 25' on cul-de-sacs and 50' in all other situations. The minimum lot width in the VR-1 lot district is 75' measured at the front building setback line. The proposed lots comply with this standard. There are a few lots that do not meet the width requirement at the street front but they widen to the minimum required width at the front building setback line and meets that 75' requirement. The minimum setback in the VR-1 are 10' on the side yards and 25' at the rear and front. All of the minimum building setbacks are properly shown on the preliminary plat.*

*Just as a note, Lots 1 and 2 are measured from Kitty Hawk Road as their plan is to have access on Kitty Hawk Road and not the new proposed West Village Road. The proposed new road meets the standards to be classified as a local residential subdivision street however the applicant has*

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*proposed to develop the road to the greater standards of a collector or a secondary road which has a proposed right-of-way of 50' and additional road easements of 5' in width on both sides of the right-of-way. Town standards state the right-of-way for a cul-de-sac must have a diameter of at least 100' and the plat shows a diameter of 102' for the right-of-way.*

*The proposed West Village Road does not have any curbs and gutters so the minimum road pavement width is 20'. The proposed road pavement width is 20' in width with 3' shoulders. A note has been added that the road will be constructed to NCDOT subdivision standards. That was requested at the planning board meeting. As proposed the road is longer than 150' therefore the Fire Prevention Code Appendix D requires a cul-de-sac 96' in diameter to accommodate emergency vehicle maneuvering and the proposal meets this standard.*

*For the road design the sharp bend in the road around Lots 26, 27, 28 and 29 comply with the accepted design standards for mountainous or hilly terrain with a 20 mile an hour design speed. However this section of the proposed road does not meet the standards for rolling terrain with a design speed of 25 miles per hour. The topography of the site has slopes that fall within the definitions of both mountainous/hilly and rolling terrains. During the previous reviews the planning board and town council decided to accept the proposal that the road be treated as mountainous/hilly terrain which allows a tighter curve and a 20 mile per hour design speed.*

*The applicant is proposing to install an 8" waterline to serve the subdivision. It will connect to an existing 6" Dare County main running along the west side of Kitty Hawk Road. The county water department and NCDENR Division of Public Water Supply will have to grant approval of the plans and specifications for the waterlines. The proposal calls for installation of 6 new fire hydrants and Dare County would also have to grant approval of the hydrant locations in the specifications as part of its review. All lots would be served by individual on-site septic systems and septic permits would be obtained by the health department prior to the issuance of a building permit for each lot.*

*Underground electric lines are proposed for the project and Dominion Power would have to approve the plans.*

*The applicant plans to apply for a low density stormwater permit from the NCDENR Division of Energy and Mineral and Land Resources. When issued it is likely the conditions of that permit might limit some of the buildable area on certain lots that would have to be delineated on the final plat.*

*Two easements are shown on the preliminary plat. A utility easement for each lot in the proposed subdivision is subject to easements for insulation and maintenance of utilities. The width of the utility easement is 15' where abutting roads and 5' along the sides and rear of each property. There is also a road maintenance easement which is a 5' easement extending along both sides of the proposed right-of-way.*



*A list of potential conditions of approval include: 1) deed restrictions or covenants limiting the access of Lots 1 and 2 to West Kitty Hawk Road must be recorded; 2) provide documentation on the location of the sloughs and low lands to the Planning and Inspections Department; 3) a geotechnical report must be prepared by a qualified company as part of the final design for the base course and road. A copy of the final road design submitted to the Planning & Inspections Department for review and approval prior to grading or construction of the road improvements; 4) an erosion and sediment control permit must be obtained from the town prior to clearing and grading activities or installation of any improvements; 5) the applicant must obtain a permit from the Army Corps for approximately half an acre of fill in the wetland areas designated on the preliminary plat and submit a copy to staff prior to issuance of an erosion and sediment control permit; 6) a copy of the stormwater permit from the Division of Energy, Mineral and Land Resources must be provided to staff prior to installation of any improvements; 7) Dare County Water Department and NCDENR Division of Public Water Supply must grant approval of the plans and specifications for the waterlines. A copy of the approval must be submitted to staff prior to installation; 8) all necessary paperwork must be submitted and recorded to properly abandon the existing lot lines and right-of-way; 9) a limb height of 13'6" must be maintained over the proposed roadways; and, 10) addresses must be assigned to all properties.*

*The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject parcels as a Low Density Residential Area and is defined as a density averaging two units per acre with lots of 15,000 square feet or greater. The proposed subdivision complies with the stated description for development in a Low Density Residential Area.*

*At the January 15, 2015 meeting of the planning board they reviewed the proposed preliminary plat for the West Village subdivision. There was a motion made to recommend approval of the preliminary plat however the motion failed. While it meets the density requirements it was the general feeling of the planning board that it was too dense for that area. It was a confusing vote and one of the board members said it is their opinion they do not think it meets the definition of a low density development. Although the preliminary plat did not gain the support of the planning board it does meet the requirements set forth in the BR-1 zoning district and the subdivision ordinance.*

*With that I will open it to questions. Also, the applicants are here for any questions you may have of them.*

**Michael Strader, Civil Engineer, Quible and Associates:** *Good evening. I am the civil engineer of record for the West Village subdivision project submitted before you tonight. The preliminary plat requests approval of a 30 lot subdivision utilizing the same roadway and lot configuration approved previously with the exception of turning Lots 1 and 2 to access from West Kitty Hawk Road. The result of that change is that 28 lots would be accessed from the proposed West Village roadway. As Mr. Testerman mentioned the proposed subdivision is a by right use within the BR-1 zoning district and meets the standards set forth in the ordinance and in the town's Land Use Plan. We worked extensively for over a year collecting the survey data,*

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*the wetlands data, tree locations, topography, etcetera in order to determine how to best subdivide these lots for residential use and meet the intent of the ordinance and fitting our client's needs. We worked closely with the planning staff, fire administration, and Dare County water to achieve this goal and obtain an approval of the preliminary plat in December 2013. That plat approval expired in December 2014 due to a change in the investment team and the purchaser of the property. Tonight we are seeking approval of the preliminary plat with the full understanding that there is much final design work to be performed prior to any land disturbance being performed on the property. Tonight's preliminary plat approval will provide the applicant with the needed assurance to help close on the purchase of the property so they can move forward with the project.*

*I have a lot of exhibits and presentations that I could show but I don't want to bore you with that unless there are some questions and concerns and need to use them. I ask that you allow Warren Eadus and myself the opportunity to respond to any questions you might have during your deliberations.*

**Perry:** *Certainly. That is the way it should be. I am going to start off with a couple of questions. On Lot 19, page 3. I noticed there is no easement to Lot 5, Jimmy Ray and Deborah Scarborough. Previously it had been put in there in two different ways. What is the answer to that?*

**Strader:** *That is an existing property that meets the current code as far as having access to a public right-of-way on Carrenda Lane. There would be a challenge in access/egress across this canal whereby they would probably consult with the current owners at that time and obtain an access easement across Lot 19.*

**Perry:** *Carrenda Lane is a private road. Is that correct?*

**Strader:** *Yes sir.*

**Perry:** *It is not open to the public and if we approve this with no easement to Lot 5 are we land locking that property owner? The reason I ask is because under our Section 42-506 Lot Access Requirements it says no structure requiring a building permit shall be erected on any lot which, and there are three different denominations, but the bottom line is if it does not have at least a cart road, lane or other access to a public street or highway then they would never be able to build on it.*

**Strader:** *They would not be able to subdivide that property either correct?*

**Perry:** *No structure requiring a building permit shall be erected on any lot which does not have a cart road, lane or other access to a public street or highway which access is described in an instrument recorded in the office of the register of deeds etcetera. That tells me they would be land locked and not be able to build. Is that a correct statement?*

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**Warren Eadus, Quible and Associates:** *I would say no. Jimmy Ray Scarborough's lot has already been developed. He has a large lot that he could subdivide in the future if he chose to. In the earlier agreements, and I'm not privy to the contract, but they had agreements where they would be provided access so he could subdivide in the future. He would have to come before the board and say I would like to subdivide and here is how I will access that. But Lot 5 is an existing lot with access off of Carrenda. We are not land locking it. The lot is already there. It is already being used. The lot line extends all the way across so it is a much larger lot.*

**Perry:** *I understand that but my question basically is if that is a private road and he owns across he would have to bridge across the canal. Is that what would happen?*

**Eadus:** *No. He would not have to. He could seek an easement from the owners of Lot 19 and then he could come before you because whatever he does he has to come and prove to you the ability to subdivide regardless of where his access comes from. And yes he could build a road across Carrenda Lane or a bridge. The applicant is here to help clear it up.*

**Eddie Goodrich:** *The only substantial change according to the planner is that Lots 1 and 2 now front off of Kitty Hawk Road. The only reason we did that is so 28 lots come off the new road. Mr. Scarborough and Mr. Corbell will have access and we will grant them an easement. Mr. Scarborough has that in their hands right now.*

**Perry:** *You will grant them and he has it in his hands?*

**Goodrich:** *Yes sir.*

**Perry:** *All right. Let's go to Lot 26. I am looking at all of the wetlands on Lot 26 and I am asking you where the buildable area is.*

**Strader:** *I think it is time to bring up my presentation board for you. This should also be in your packet. This is simply a preliminary sketch plan that shows potential building pads, septic areas and shows the constructability of all of those lots. You had asked about number 26 which would be this particular lot. I think these are 30 x 50 on this particular sketch.*

**Perry:** *Where is it on 26? That little piece right there?*

**Strader:** *Yes sir.*

**Perry:** *That is a buildable lot? Okay.*

**Strader:** *That is showing an example of a three bedroom home, active and repair wastewater system.*

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**Eadus:** *I want to point out, as we are looking at these plats, they are 1" equals 80'. So when you look at this plat it is small. It is almost double the size we normally would see and I think it is due to the nature of the property. It is such a long property, nearly 22 acres, so conveying all this information on a scale of 1 to 40 or so that I am more used to looking at ... it is a little counter intuitive to look at this and say that is a tiny little area but it is a whole lot bigger. Let's just keep in mind it is a very small scale.*

**Perry:** *I understand that. It says one to ten thousand plus is what it is talking about here on your scale but the proposed wetlands fill. Let's go to page 2. One place there you have cross hatched proposed wetlands fill as half an acre total. When you say total do you mean total of all the road including page 3 and the cul-de-sac which has an awful lot? Even though it is a small scale I understand that.*

**Eadus:** *Yes sir. And half an acre is the maximum we would be able to apply for. We actually anticipate being able to shrink that number but at this stage in the design we do not have the ability to fine tune it. We have to go through that exercise with the Corps of Engineers and with the Division of Water Resources as an avoidance and minimization process. As we proceed through that permit they will ... we have to prove to them that we need what we are going to ask for. Half an acre is all we are going to be able to ask for under their Nationwide General Permits and that is all we propose to ask for and we hope to bring that number down. There are economic reasons and other reasons why you do that but it will not be any more than that. Just as a scenario anyone can fill a Section 404 wetlands which are governed by the Corps of Engineers. You have the right to fill a tenth of an acre under their regional permits. You have to apply and give them a good reason but the permits have already been written. They are written every five years. The Corps likes to see that when you plan a subdivision. You go ahead and show them what you are going to do because they do not want every property owner to come back and say I am going to fill my tenth of an acre and then someone else is going to fill his tenth. Next thing you know you have filled 3 acres of wetlands. What this does is it shows we can do this whole subdivision with half an acre or less of fill and that is what they allow. It is a Nationwide 14 Permit.*

**Perry:** *No property owner, no individual lot, because all you are showing here is hatched areas for the road.*

**Eadus:** *Every lot can be built upon and permitted without need for fill. I personally conducted the wetlands delineation. I conducted the CAMA delineation. Both of those items have been reviewed and approved. The state saw our stormwater design in a soil scientist's report that covered the whole site. I don't know how many soil borings he did but in excess of 50 to 60. We have based it on this information, on real data. We have not just come in and said well we can just throw this on here and get 30 lots. This is very detailed and we have ...*

**Perry:** *This would be a lot easier if it was not so intense. That is the problem.*

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**Eadus:** *There are a lot of factors and we feel like the density is spelled out pretty well in your ordinance and we follow that.*

**Perry:** *On this new plat, and we are looking at it as a new plat, the town engineer at the December 2<sup>nd</sup> meeting was concerned that there were sloughs that could be easily covered up and not taken into account. What he wanted was the sloughs to be identified on the plat and recorded so they would not be clandestinely filled. Have you shown those sloughs here anywhere?*

**Strader:** *Those sloughs are accounted for in this particular sketch plan. It shows those sloughs based upon that licensed soil scientist's report. What I provided to Rob, prior to the planning board meeting, is a copy of that report and that document has those sloughs. I am not sure how you go about recording it but if it needs to be on the final plat it can be recorded on the final plat.*

**Eadus:** *Anything that is jurisdictional wetlands has those protections in place. I don't know if slough meets the definition of a Section 404 wetland or not.*

**Strader:** *I was at that meeting with the town engineer and other members of staff and what he was concerned about was the on-site wastewater systems. That is why I refer to that exhibit because it shows all of our proposed wastewater setbacks for the various standards for wastewater systems and TS2's the more advanced wastewater systems. Those sloughs have their own setback just as if they were wetlands.*

**Perry:** *Anyone else have questions?*

**Klutz:** *The business of the sloughs I remember from last time. I had the impression the engineer was satisfied with what had been done prior to the council meeting if my memory serves. Is that correct?*

**Eadus:** *That was our understanding. We took them into account in planning any wastewater systems. Dare County Health Department is also going to have to come out and inspect each one so we are not going to be able to permit a system in a low area.*

**Perry:** *But that is after the fact. He wanted the sloughs recorded on the plat so it could not be filled before the health department is called.*

**Klutz:** *I see.*

**Perry:** *You have to get ahead of the curve. I have another question that deals with the road. The road was under a lot of conversation when reviewed the first time. There was a question about the curve. The hilly terrain, and I have walked it, is mostly up and down. It goes pretty much straight down to a ditch on one side which eventually goes to a stream. It is not a ditch anymore*



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*but a stream, and a canal on the other side and both of them eventually go to Kitty Hawk Bay. The question on the road had to do with speed limits and whether or not that bend should be straightened out. We accepted it last time. None of us liked it but we accepted it. We are taking a fresh look and having walked the land, I wonder if that is a good plan. Would an alternate that straightens the road out be better so you don't have people going 25 miles an hour and then suddenly going to 20? What say you to that?*

**Strader:** *The town's ordinance specifies in Section 38-129 that all curves, tangents, "K" values, minimum centerline radii and other central road design elements shall be designed in accordance with the standards found in the current edition or revised of the NCDOT publication Subdivision Roads - Minimum Construction Standards. Based upon the actual topography defined as hilly terrain is why we prepared these exhibits. We prepared this particular exhibit I believe prior to the council meeting in December of 2013. What we did is created a shaded hatch to show you where those slopes in excess of 15% are. That is the definition of hilly terrain and DOT subdivision roadway and construction standards so based on the actual topography in excess of 15% slopes, the horizontal curves of the roadway were designed with that minimum, with that design speed of 20 miles per hour and the centerline curve radii at 90' radius or greater. Just for edification, and I can put these on the overhead so that everyone can see, these are excerpts from DOT subdivision roads. That is the table that everyone refers to when they are referring to the construction standards. What I try to highlight here is that hilly definition for the minimum centerline radius is 90' which is what we would qualify under in this case. There are also references that show, it is more nationalized, but it is the same 20 mile per hour design speed 90' centerline horizontal curve radius, an excerpt out of your current town code. We understand there are some roads with that already, have that designated 20 mile per hour design speed. Under a private roadway scenario it would actually be even a tighter radius of 60'. That is not what we are pursuing here but I posted it so you could see it. Your town engineer has had an opportunity to review so I put that on there also. He has seen and understood that what we have proposed did meet all the minimum construction standards.*

**Klutz:** *I remember a previous time we needed to approve the selection of the proposed road. The decision was to accept your proposal for the road to be treated as mountainous/hilly and is consistent with DOT guidelines. Does it need approval again? Is that what you are asking?*

**Perry:** *That is why I'm bringing it up.*

**Klutz:** *Will we talk about it again in the discussion or now?*

**Perry:** *We are not in a public hearing so we can ask the question and discuss it. It would not be inappropriate.*

**Klutz:** *I guess what you are saying is that at a second look you think this speed limit reduction to 20 miles per hour, based on the actual terrain, is not something you would want to approve again or ...*

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**Perry:** *That is why I raised it. Would you want to approve it again? And if you don't then it would be part of the motion.*

**Klutz:** *This also has an impact on the total amount of fill right? Because you are using the existing terrain and do not have to disturb the terrain there and ...*

**Strader:** *That is what that list \_\_\_\_\_.*

**Klutz:** *So right now the total you have for the fill that you are anticipating for this whole subdivision, is half an acre correct? And changing this would change that number as well.*

**Strader:** *That and it would potentially increase land disturbance, having to knock out some of those high ridges that we were trying to ... we were trying to help balance the ridges from the low lands and that was one of the methods we used. You can think of it as a mass balance of the earth.*

**Eadus:** *It would inevitably be either going up and down severely or we would be cutting tops of dunes and filling in between. We also felt like the curve added some aesthetics in the subdivision. It is something we talked about and I think some of you all even agreed. I remember we had some compliments. This model of putting in curves and lowering the speed limit is not a new idea. It is something that is being done all over the world to slow people down. We tend to build big, flat, straight roads and tell people you can only drive 25 and they roar up and down them. Then we come back and put signs up, put speed bumps and do other things to slow people down. It has been shown that you design it so that they have to go slow.*

**Klutz:** *If you are looking for an opinion, my opinion is that I would rather see them preserve the existing terrain than start chopping off the tops of dunes.*

**Perry:** *All right. Any further discussion?*

**Pruitt:** *When we talk about Lot 19, at one time we talked about a right-of-way for the purposes of being able to subdivide this parcel. Is a right-of-way being talked about or an easement?*

**Goodrich:** *It is a 30' easement.*

**Pruitt:** *A 30' easement. Thank you.*

**Klutz:** *When I went back and looked at what had been done previously I thought they wanted a minimum and a maximum size of 20' for the easement. Remember that? So what is it?*

**Perry:** *We don't know. All we know is what we have been told tonight. It is not platted anywhere so we have no clue.*



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**Eadus:** *In speaking with Jimmy Ray and Ada Scarborough throughout this process, and the potential purchasers of the project, we understand there may be sometime in the future where Jimmy Ray and Sanford may decide they want to subdivide their properties, which are existing and extend across Carrenda Lane. They have not disclosed to anyone what they want to do. We do not have the data to know if they can do it. However they have said they want to preserve that right. In preserving that right, it is my understanding they have a contract and an amendment to the contract, they have said that if you sell us the property, because they don't own it yet and they cannot do anything, we can grant you an easement. Whatever it is you decide to do you have to go back to the town and if you want to subdivide you have to show the town that you can do it. As it is right now we cannot say what it is they want to do. If I remember correctly, I think we asked for 30'. What we are trying to do is let that play out in their contract. We are not trying to take anything away from anybody. We are actually making the combination so if they do want to do it in the future they have that chance.*

**Klutz:** *Has the easement been identified? Where it is going to be? It is Lot 19 that is affected is that it?*

**Eadus:** *We have not finalized the position.*

**Klutz:** *You are just saying that part of the contract includes an easement will be granted. That easement would have to be put in place somewhere on the plat in order for the owners to pursue that if they wanted to do something.*

**Goodrich:** *We are doing everything we can do for the Scarborough's and Mr. Corbell. That is why we turned the two lots to face Kitty Hawk Road which allows 28 lots on the new road and then the two lots that \_\_\_\_\_ Mr. and Mrs. Scarborough there and Mr. Corbell own and if we give them a 30' wide easement and Mrs. Scarborough has that in her hands right now.*

**Klutz:** *When you say it is a 30' easement you have not actually located it on the lot at this point?*

**Goodrich:** *We can put it anywhere that works best for them.*

**Jay Wheless, Attorney:** *If I may, I am Jay Wheless, a lawyer in Manteo and I drafted the amendment which has been given to Mrs. Scarborough. We intentionally kept, I don't want use the word nebulous, but fluid. We committed to them an easement from the southerly terminus of whatever cul-de-sac might get approved, to the northern edge of their property, of a certain width of wherever we could accommodate it. We have a definite commitment to do it but the where we needed to leave fluid because of this meeting and such other meetings as may come before us.*

**Pruitt:** *With a 30' easement you can subdivide. It doesn't have to be a deeded right-of-way? Is that correct?*

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**Testerman:** *I believe so. That is what was shown on the previous preliminary plat.*

**Pruitt:** *How about after the first preliminary one? There was discussion from Mr. Scarborough about wanting to subdivide so the revised one came. If I am not mistaken it showed an actual right-of-way going through Lot 19 onto Lot 5 and doing away with the easement. The original easement that was shown was actually through wetlands and it wasn't very good. He wanted an easement to his property without having to get a bunch of wetland permits. It went through wetlands so the revised one showed a nice way to his property. Now not only do we not have an easement, we don't have a right-of-way either.*

**Klutz:** *You can get an ingress/egress easement. It is similar to a right-of-way only it is not public.*

**Wheless:** *It is. They are the same thing. One sounds more important but it is not.*

**Klutz:** *It gives you the same rights.*

**Wheless:** *They both give the right to use the land of another person for the purposes that are outlined in the document.*

**Pruitt:** *And they understand they are not going to be able to subdivide that lot and give it to each one of their children. They understood that?*

**Wheless:** *I have not spoken directly to them. I have only spoken to their lawyer.*

**Perry:** *Not only that. They cannot build on it under our town code Section 42-506, Lot Access Requirements.*

**Klutz:** *It doesn't allow for a private ingress/egress easement in our code?*

**Perry:** *It says unless it has a cart road, lane or other access. It doesn't care what the access is but they have to have some way if they are going to build a house. They cannot be land locked.*

**Klutz:** *I understand that but my understanding of an ingress/egress easement, which I happened to have once, is that the people who have the easement have the right to always use it to access their property. The whole thing was brought about by someone who had land locked property. As it turns out there is a law that says you basically have to give them an easement if they are land locked.*

**Goodrich:** *The reality of the situation is until somebody spends about \$400,000 to build a road from Kitty Hawk Road back to Lot 19, the land owned by Mr. Scarborough and Mr. Corbell, it is financially not feasible to develop because it would probably cost \$100,000 to build a bridge to*

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*get across. So until somebody builds a road that is going to cost \$400,000 they don't have a reasonable, feasible access.*

**Klutz:** *To that property right now.*

**Goodrich:** *That is the reality of it.*

**Perry:** *Anyone else have questions? We either have to approve or we have to deny and if we are going to deny we need to base it on something. I am going to float a motion and see if it gets a second.*

**Klutz:** *If it gets a second can the second be for purpose of discussion or should I say something now?*

**Perry:** *If we have second then there would be discussion.*

**Goodrich:** *Can I say a few things? I'll be very brief. Kitty Hawk Woods is protected. The State of North Carolina owns practically all of it and the town owns a bunch of it. I know this is not very popular but there are about 3,000 people that live in Kitty Hawk and I think we need to do what is important for the Town of Kitty Hawk rather than something a few people simply do not like. Only one person spoke against it tonight. If you look at the layout I don't think there will be a house within 150' or 200' of any of the neighbors and they will be through the woods. I realize it is somewhat unpopular but all we intend to do is build 2 bedroom, 3 bedroom, 4 bedroom houses for families. They will have children. This is not going to be a rental neighborhood. It is going to be a year 'round neighborhood. There may be some people that buy a house and use it as a second home and retire here one of these days and that is what it will turn into. I appreciate you hearing it tonight. Thank you.*

**Mayor Perry made a motion to deny based on:** 1) the development plat exceeds the intent and purpose of the 2003-2004 adopted Land Use Map in that a majority of the property is listed as conservation and lot density exceeds the policy stated under Land Use Plan policy #12(f) as written in the CAMA Core Land Use Plan update of 2003-04 and adopted on April 6, 2005; 2) the intensity of the proposed development conflicts with Land Use Plan policy #12(a) in that numerous platted lots and the proposed road will have a negative impact upon adjacent natural hazard areas specifically flood prone wetland; 3) the intense quantity of proposed filled areas for the road and subsequent individual lots is inconsistent with Land Use policy #25(b) and will have negative impacts upon water quality to adjacent canals and natural streams that empty into Kitty Hawk Bay, a habitat for maturing shrimp, crab and numerous fish species; and, 4) the plat does not show the sloughs on the plat as identified by a soil engineer and is strongly recommended by the town engineer. Councilman Garriss provided a second.

**Perry:** *The floor is open for discussion.*

**Klutz:** *My comments are directed at what I saw in the packet that said whether we like this or not it was consistent with the town's standards. From my point of view an applicant has only the standards to go by which are in the town code. If those standards are met I think at that point the applicant has done his part of the job. What I don't know is with the curvature of the road, which was discussed and needed to be approved, if that is not approved by the council ... the other item was the easement and it sounds like it is under control. I believe that an applicant, once those standards are met, has a reasonable expectation of approval.*

**Bateman:** *The other developer that came before us, who is a friend of mine, I called him, expressed my belief this piece of property was over developed. I was as sincere as I possibly could be. I walked this property many years ago when I was a boy visiting my Aunt Jenny. We used to go over there and walk that property. It is wetlands. It is all wetlands. Now your engineer has done a great job in putting the facts together for us but I expressed at that time I was not supportive of this and I have the same opinion now. I am not supportive of it at this level of development. If you came back with a less intense development I might be in favor of it. I have said the same thing during the other two meetings and I can't retract from that. You do a great job in your developments so it has nothing to do with that. Has nothing to do with that at all. It has to do with this piece of property and the fact that the topography of it would not handle this development in my opinion.*

**Garriss:** *I agree with everything you just said. We discussed that the last time and had the same feelings. It is just too much on that piece of property.*

**Pruitt:** *I agree.*

**Perry:** *The intensity of it?*

**Pruitt:** *I think it is too intense. After you put in the road and use the majority of the high land ... almost 2 acres is going to be the road, almost 50% of the total project is going to be wetlands.*

**Perry:** *Any further discussion? All in favor of the motion?*

**The vote was 4-1 with Councilwoman Klutz voting no.**

**Perry:** *The motion passes. It is denied.*

#### **10.) New Business**

**a.) East Lillian Street Beach Access Parking Improvements Project – Two bids for this project were opened on January 14, 2015. The RPC bid was in the amount of \$59,600 and Barnhill's was in the amount of \$56,420. It is recommended Barnhill be awarded the contract with an added contingency of \$4,000 for a total of \$60,420.**

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**Stockton:** *This project was advertised and bids were received on January 14, 2015. The town has applied for and was awarded two grants. One was from DENR in the amount of \$52,941 and one from the Tourist Bureau in the amount of \$17,647 for a total of \$70,588. The two bids were opened on January 14<sup>th</sup> at the town hall. One was from RPC in the amount of \$59,600 and one was from Barnhill in the amount of \$56,420. The bids have been reviewed by our engineer John DeLucia and he recommends awarding the contract to Barnhill with an added contingency of \$4,000 for a total of \$60,420.*

**Perry:** *The first question I have is the contingency. It is not something we normally see and in my experience contingencies generally tend to get used. It makes the Barnhill contract higher than, not by much, but higher than the RPC.*

**Stockton:** *He would recommend the contingency for either company.*

**Perry:** *Is there any reason we can't approve this without the contingency? We can handle the difference if something comes up.*

**Stockton:** *We can do that.*

**Perry:** *Does it look funny to anybody else? It just doesn't look right. Perception is everything. I am going to recommend somebody make a motion but I would like for you to leave out the contingency.*

**Councilwoman Klutz made a motion for the approval of the lowest bid for the East Lillian Street Beach Access Parking Improvement from Barnhill Contracting Company in the amount of \$56,420. I further authorize the town manager to sign and the town clerk to assess said contract. MPT Bateman seconded the motion and it passed unanimously, 5-0.**

**11. Reports or General Comments from Town Manager**

**a.) Coastal Planning and Engineering Update**

Manager Stockton reported Coastal Planning and Engineering have completed 92.4% of their work for the storm damage reduction project. CP&E has completed additional work on the project management, development of environmental documents, beach fill design analysis and data analysis associated with the off shore sand search. In addition there will be meeting with the engineers, county staff and representatives of the other towns tomorrow in Kill Devil Hills.

**b.) Police Department Compliment**

Manger Stockton noted the town has received a compliment from Sea Scape Beach and Golf Villas manager concerning a recent workplace violence workshop that was conducted by Police

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Chief Johnson and Investigator Brian Strickland. The workshop included how to respond to violence, becoming aware of sex offenders and how to respond to guests carrying weapons.

**12. Reports or General Comments from Town Attorney**

Mayor Perry recognized Attorney Varnell, sitting in for Attorney Michael, and asked if he had anything to report.

Attorney Casey Varnell replied he did not.

**13. Reports or General Comments from Town Council**

There were no further comments or reports from council.

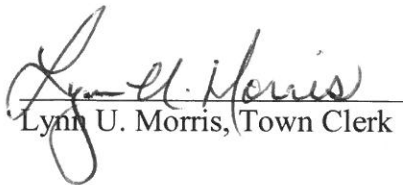
**14. Public Comment**

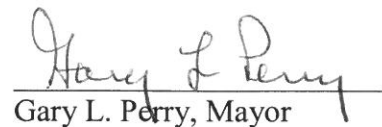
There were no further comments from the public.

**15. Adjourn**

**MPT Bateman made a motion to adjourn. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.** The meeting adjourned at 7:31 p.m.

These minutes were approved at the March 2, 2015 council meeting.

  
Lynn U. Morris, Town Clerk

  
Gary L. Perry, Mayor